

FILED
Clerk
District Court

JAN 13 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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14 **Attorneys for Defendant Todd Keith Johnson**

15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE NORTHERN MARIANA ISLANDS**

17 **ALAN STUART MARKOFF, D.D.S. dba**)
 18 **TOOTHWORKS and OPEN CHOICE,**)

19 **Plaintiff,**)

20 **vs.**)

21 **TODD KEITH JOHNSON, D.D.S.,**)

22 **Defendant.**)

23 **CIVIL ACTION. NO: 05-⁰⁵~~0030~~**

24 **MOTION TO DISMISS PLAINTIFF'S**
 25 **SECOND CAUSE OF ACTION**

26 **Date : Munson, Chief Judge**

27 **Time : 4:00 PM**

28 **Judge: FEB 16 2006**

29 **COMES NOW** Defendant Todd Keith Johnson, D.D.S. ("Dr. Johnson"), by and through
 30 counsel and pursuant to Federal Rule Of Civil Procedure 12(b)(6), to move this Court to dismiss the
 31 Second Cause of Action in Plaintiff's Complaint entitled "Fraud and Misrepresentation." This
 32 Motion is supported by the pleadings on file with the Court, the Memorandum In Support of this
 33 Motion filed separately with this Court and any and all oral argument to be adduced at the hearing
 34 of this Motion.

35 As more fully explained in the accompanying Memorandum In Support, Plaintiff has failed
 36 to plead with sufficient particularity his claims of fraud against Dr. Johnson. While there is

1 generally no need to plead with any great specificity the particular factual grounds upon which a
2 cause of action is based, the Federal Rules Of Civil Procedure require that all allegations of fraud be
3 plead with heightened particularity. Fed.R.Civ.P. 9(b). If this requirement is not met, the party
4 claiming fraud will not have stated a cause of action upon which relief can be granted and the claim
5 should be dismissed under Rule 12(b)(6) of the Federal Rules Of Civil Procedure.

6
7 Here, Plaintiff has failed to meet the minimum requirements for pleading fraud with
8 particularity and this cause of action should be dismissed from Plaintiff's Complaint.

9
10 Dated this 16th day of January, 2006.

Respectfully submitted,

11 O'CONNOR BERMAN DOTTS & BANES
12 Attorneys for Defendant Todd K. Johnson

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15 By: 

DAVID G. BANES

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